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APPELLANT PRO SE:

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ATTORNEYS FOR APPELLEE:

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Attorney General of Indiana

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Deputy Attorney General  
Indianapolis, Indiana

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**IN THE  
COURT OF APPEALS OF INDIANA**

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|--------------------------------|---|-----------------------|
| ZANE PADGETT,                  | ) |                       |
|                                | ) |                       |
| Appellant-Plaintiff,           | ) |                       |
|                                | ) |                       |
| vs.                            | ) | No. 46A03-0604-CV-185 |
|                                | ) |                       |
| ED BUSS, SUPERINTENDENT OF THE | ) |                       |
| INDIANA STATE PRISON,          | ) |                       |
|                                | ) |                       |
| Appellee-Defendant.            | ) |                       |

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APPEAL FROM THE LaPORTE SUPERIOR COURT, ROOM 4  
SMALL CLAIMS DIVISION  
The Honorable William J. Boklund, Judge  
Cause No. 46D04-0509-SC-2133

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**November 14, 2006**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**SULLIVAN, Judge**

In this pro se appeal from a small claims action, Appellant, Zane Padgett, challenges the trial court's summary judgment in favor of Appellee, Ed Buss, denying Padgett's claim for \$5,850.00, the alleged value of items Padgett argued were confiscated from him during his incarceration.

We affirm.

According to Padgett, an inmate of the Indiana State Prison, certain items of property belonging to him, specifically two gold rings, a silver Movado watch, a gold chain necklace, and a gold cross medallion were confiscated from him on January 2 and 6, 2004. Upon making efforts to regain possession of the property, Padgett claims he was informed that he must prove he had received the property through legitimate channels in order to recover it. On July 15, 2004, Padgett's mother received a letter from then Superintendent C. Davis of the Indiana State Prison indicating that Padgett had been informed he was required to prove he had received the property through legitimate channels, that he had not provided such proof, and that the property would not be released. Padgett does not contest that he was aware of the above policy as explained in the letter to his mother.

On September 12, 2005, Padgett filed the instant small claims action against Indiana State Prison Superintendent Ed Buss for \$5,850.00, the alleged value of the property.<sup>1</sup> On December 13, 2005, Padgett submitted a letter to Superintendent Buss

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<sup>1</sup> On September 20, 2005, pursuant to the court's order under Indiana Code §§ 34-58-1-1 and 2 (Burns Code Ed. Supp. 2006), Padgett filed a compliance statement indicating his claims were not frivolous, did not lack an arguable basis in fact and law, and did not seek relief from a defendant who was immune to liability. In response, on September 20, 2005, the court ordered the clerk to process Padgett's

detailing his difficulty in proving he had received the property through legitimate channels because the necessary documentation indicating he had received the necklace and medallion from the chaplain's office was allegedly destroyed, and the chaplain who had given it to him was no longer there. Subsequently, on December 27, 2005, Padgett was informed that due to his failure to provide the necessary documentation, his property had been destroyed. On January 30, 2006, subsequent to his request for a continuance in the instant action due to, among other things, "procedural problems," Padgett filed a "Notice of Loss of Property – Tort Claim" with the Legal Services Division of the Department of Correction (DOC) seeking reimbursement for the medallion and necklace in the amount of \$3,700.00.

On March 2, 2006, Buss filed a motion for summary judgment alleging Padgett had failed to follow the requirements of Indiana Code § 34-13-3-7(a) (Burns Code Ed. Repl. 1998), which requires that an offender who makes a claim for compensation for loss of personal property against the DOC must file an administrative claim with the DOC within 180 days of the alleged loss. That same day, the court granted Buss's motion for summary judgment.<sup>2</sup> On March 17, 2006, Padgett filed a response to Buss's motion for summary judgment, contesting Buss's claim that he had failed to follow such

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claim and set it for a January 31, 2006 bench trial. The trial was subsequently reset to July 18, 2006, pursuant to a January 12, 2006 continuance requested by Padgett due to, among other problems cited by Padgett, "procedural problems" he had discovered. Appendix at 11.

<sup>2</sup> The court's order granting summary judgment found, without further explanation, that there was no genuine issue of material fact and that Buss was entitled to judgment as a matter of law. We note that, as Padgett pointed out in his Motion to Reconsider Grant of Defendant's Motion for Summary Judgment, the court granted summary judgment before Padgett had a chance to respond. See Ind. Trial Rule 56(C) ("An adverse party shall have thirty (30) days after service of the motion to serve a response and any opposing affidavits."). Upon appeal, Padgett does not claim error on this point.

requirements. On March 22, 2006, Padgett filed a motion to reconsider the granting of Buss's summary judgment motion, which the court denied.<sup>3</sup> Padgett filed his notice of appeal on April 24, 2006.

We first take note of the State's argument that Padgett's appeal is not timely. Appeals which are not timely filed are forfeited. See Ind. Appellate Rule 9(A)(5). Padgett filed his motion to reconsider, and the court denied it, on March 22, 2006. Pursuant to Indiana Appellate Rule 9(A)(1), a party initiating an appeal by filing a Notice of Appeal with the trial court clerk must do so within thirty days following the court's ruling on a motion to correct error.<sup>4</sup> Thirty days following the court's denial of Padgett's motion to reconsider would have been Friday, April 21, 2006. Padgett filed his notice of appeal on Monday, April 24, 2006, three days following the thirty-day deadline, but argues he handed his notice to the appropriate prison official for filing on the appropriate date. Consistent with Padgett's argument, we observe from his notice of appeal that he appeared to hand the notice to an appropriate prison official for placement into the prison's internal mailing system on April 18, 2006, which would have been within the

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<sup>3</sup> As the order of summary judgment was a final judgment, Padgett's motion was, in substance, a motion to correct error. See Hubbard v. Hubbard, 690 N.E.2d 1219, 1221 (Ind. Ct. App. 1998). As we decline to favor form over substance, we will consider it as such. Id.

<sup>4</sup> We construe Padgett's motion to reconsider as a motion to correct error which may be appealed within thirty days of the court's ruling on such motion. See note 3, supra.

designated thirty-day deadline.<sup>5</sup> See Baker v. State, 505 N.E.2d 498, 499-500 (Ind. Ct. App. 1987). We will therefore address Padgett’s claims on the merits.

Under Indiana Small Claims Rule 11(A), judgments in small claims actions are “subject to review as prescribed by relevant Indiana rules and statutes.” City of Dunkirk Water & Sewage Dep’t. v. Hall, 657 N.E.2d 115, 116 (Ind. 1995). Motions for summary judgment may be granted in small claims court actions in cases where there is no genuine issue of material fact and judgment is proper as a matter of law. See Bedree v. Sandler & Sandler, 426 N.E.2d 707, 708 (Ind. Ct. App. 1981), trans. denied; Ind. Trial Rule 56(C). Because the dispositive issue in this case is a pure question of law, our review is de novo. Trinity Homes, L.L.C. v. Fang, 848 N.E.2d 1065, 1068 (Ind. 2006).

Padgett’s first claim upon appeal is that the trial court erred in granting summary judgment in favor of Buss because Padgett filed a proper and timely claim. Padgett argues that he filed the obligatory administrative claim, albeit after the instant claim, and that he filed the administrative claim within days of his actual “loss,” which he claims did not occur until December 27, 2005, “the date he discovered that he could not send his property home.” Appellant’s Brief at 7.

Indiana Code § 34-13-3-7 provides the following, in pertinent part:

“(a) An offender must file an administrative claim with the department of correction to recover compensation for the loss of the offender’s personal property alleged to have occurred during the offender’s confinement as a result of an act or omission of the department or any of its agents, former

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<sup>5</sup> We also observe, however, that Padgett erroneously claims in his appellate brief that he filed a “timely” notice of appeal on April 24, 2006, which was three days following the deadline. Appellant’s Brief at 2.

officers, employees, or contractors. A claim must be filed within one hundred eighty (180) days after the date of the alleged loss.

(b) The department of correction shall evaluate each claim filed under subsection (a) and determine the amount due, if any. If the amount due is not more than five thousand dollars (\$5,000), the department shall approve the claim for payment and recommend to the office of the attorney general payment under subsection (c). The department shall submit all claims in which the amount due exceeds five thousand dollars (\$5,000), with any recommendation the department considers appropriate, to the office of the attorney general. The attorney general, in acting upon the claim, shall consider recommendations of the department to determine whether to deny the claim or recommend the claim to the governor for approval of payment.”

We are unconvinced that Padgett filed a proper claim before the small claims court. The plain language of I.C. § 34-13-3-7(a) requires an offender to file an administrative claim with the Department of Correction in order to recover compensation for the loss of his personal property. If such claim is approved by the Department of Correction and is in excess of \$5,000, it must then be submitted to the Attorney General. With respect to Padgett’s claims for compensation for the two gold rings and the Movado watch, there is no evidence that any administrative claim was ever made. Indeed, the administrative claim filed on January 30 with the Department of Correction seeks \$3,700.00 in reimbursement for the gold chain and medallion only. Further, this administrative claim was made on January 30, 2006, more than four months following Padgett’s initiation of the instant small claims action. At the time of summary judgment in the instant action, no decision had yet been issued by the Department of Correction on the administrative claim, and the Attorney General had never received a claim from or on behalf of Padgett.

A claimant who has an available administrative remedy must pursue that remedy before being allowed access to the courts. Higgason v. Lemmon, 818 N.E.2d 500, 503 (Ind. Ct. App. 2004), trans. denied. This policy avoids premature litigation, permits the compilation of an adequate record for judicial review, and affords agencies the opportunity and autonomy to correct their own errors. Id. Although the rule requiring exhaustion of administrative remedies is not without exceptions, such exceptions occur when administrative procedures are not capable of “answering the question presented” by a party’s claim. Id. Padgett has made no claim that the available administrative remedies were incapable of answering his claim. Further, given the above settled law dictating that an individual required to seek an administrative remedy do so before pursuing a remedy through the court system, we reject Padgett’s argument that I.C. § 34-13-3-7 does not mandate a specific sequence for pursuing administrative claims.

Having determined that the proper procedure for a prisoner seeking compensation for lost property is to file an administrative claim with the Department of Correction pursuant to I.C. § 34-13-3-7, and that such procedure must be exhausted before seeking a remedy through the courts, we find no error in the court’s granting summary judgment in the instant small claims action initiated by Padgett. Having found Padgett’s claim was not properly before the court, we find it unnecessary to address his challenges to summary judgment on the basis that he had not suffered a “loss” prior to notification that

his property was destroyed<sup>6</sup> and that the doctrine of equitable estoppel as it impacts the date of said loss was operative in this case.

The judgment of the trial court is affirmed.

ROBB, J., and BARNES, J., concur.

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<sup>6</sup> We note Padgett claims he did not suffer a “loss” until he was notified his property was destroyed, on December 27, 2005, yet he nevertheless filed the instant action seeking compensation for such loss on September 12, 2005.